

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 834

Introduced by Assembly Member Solorio

February 26, 2009

~~An act relating to the healing arts.~~ *An act to amend Sections 805 and 809.2 of, and to add Section 805.05 to, the Business and Professions Code, relating to health care practitioners.*

LEGISLATIVE COUNSEL'S DIGEST

AB 834, as amended, Solorio. Health care practitioners: ~~peer review.~~ *review: voluntary remediation.*

Existing law requires peer review bodies, as defined, and the chief executive officer or administrator of any licensed health care facility or clinic to file reports with the applicable state licensing agency of specified health care practitioners upon the occurrence of specified events, including, without limitation, a practitioner voluntarily accepting restrictions on staff privileges, membership, or employment, as specified, for a medical disciplinary cause or reason. Existing law also entitles a practitioner to a hearing, as specified, concerning a final proposed action for which a report is required to be filed. Existing law prohibits a hearing officer from gaining any direct financial benefit from the outcome, from acting as a prosecutor or advocate, and from having a vote.

This bill would provide an alternative to the requirement to file a report of voluntary acceptance of these restrictions, by authorizing a peer review body to impose, and a practitioner to accept, voluntary remediation which may include mandatory proctoring, consultation, education, and retraining. The bill would also authorize the peer review

body to limit the practitioner's staff privileges, and prohibit a practitioner from seeking new staff privileges, during the pendency of the voluntary remediation. The bill would also require the reporting person, as defined, to file a report, as specified, with the applicable agency within 15 days following the commencement date of a voluntary remediation, to immediately file a supplementary report if the practitioner fails to fulfill the terms of the remediation, and to file another report within 30 days following completion of a remediation. The bill would require the reporting person to provide the subject practitioner with all reports it files and with a notice of the practitioner's right to submit additional statements or other information. Within 15 days following the commencement of a voluntary remediation, the reporting person would be required to provide a notice of remediation to each facility where the practitioner then has staff privileges. The bill would provide that a practitioner who accepts a voluntary remediation is not entitled to a hearing with respect to the remediation, and would specify that a practitioner who rejects the remediation would be entitled to a hearing concerning any proposed final action for which a reporting person is required to file a report pursuant to existing law. The bill would prohibit a lawyer who has represented the applicable peer review body or licensed health care facility or clinic within the prior 2 years from serving as a hearing officer, and would prohibit any hearing officer from gaining any benefit from the outcome. The bill would also make conforming changes.

~~Existing law requires peer review bodies, as defined, to file reports with the applicable state licensing agency of specified health care practitioners upon the occurrence of specified events, including, without limitation, a licensee being denied staff privileges for a medical disciplinary reason.~~

~~This bill would declare the Legislature's intent to enact legislation revising the health care practitioner peer review process in California to improve patient safety and care.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 805 of the Business and Professions Code
- 2 is amended to read:

1 805. (a) As used in this section, the following terms have the
2 following definitions:

3 (1) “Peer review body” includes:

4 (A) A medical or professional staff of any health care facility
5 or clinic licensed under Division 2 (commencing with Section
6 1200) of the Health and Safety Code or of a facility certified to
7 participate in the federal Medicare Program as an ambulatory
8 surgical center.

9 (B) A health care service plan registered under Chapter 2.2
10 (commencing with Section 1340) of Division 2 of the Health and
11 Safety Code or a disability insurer that contracts with licentiates
12 to provide services at alternative rates of payment pursuant to
13 Section 10133 of the Insurance Code.

14 (C) Any medical, psychological, marriage and family therapy,
15 social work, dental, or podiatric professional society having as
16 members at least 25 percent of the eligible licentiates in the area
17 in which it functions (which must include at least one county),
18 which is not organized for profit and which has been determined
19 to be exempt from taxes pursuant to Section 23701 of the Revenue
20 and Taxation Code.

21 (D) A committee organized by any entity consisting of or
22 employing more than 25 licentiates of the same class that functions
23 for the purpose of reviewing the quality of professional care
24 provided by members or employees of that entity.

25 (2) “Licentiate” means a physician and surgeon, doctor of
26 podiatric medicine, clinical psychologist, marriage and family
27 therapist, clinical social worker, or dentist. “Licentiate” also
28 includes a person authorized to practice medicine pursuant to
29 Section 2113.

30 (3) “Agency” means the relevant state licensing agency having
31 regulatory jurisdiction over the licentiates listed in paragraph (2).

32 (4) “Staff privileges” means any arrangement under which a
33 licentiate is allowed to practice in or provide care for patients in
34 a health facility. Those arrangements shall include, but are not
35 limited to, full staff privileges, active staff privileges, limited staff
36 privileges, auxiliary staff privileges, provisional staff privileges,
37 temporary staff privileges, courtesy staff privileges, locum tenens
38 arrangements, and contractual arrangements to provide professional
39 services, including, but not limited to, arrangements to provide
40 outpatient services.

(5) “Denial or termination of staff privileges, membership, or employment” includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) “Medical disciplinary cause or reason” means that aspect of a licensee’s competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) “805 report” means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:

(1) A licensee’s application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licensee’s membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed; or voluntarily accepted, *other than as provided in Section 805.05*, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licensee’s application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

1 (d) For purposes of filing an 805 report, the signature of at least
2 one of the individuals indicated in subdivision (b) or (c) on the
3 completed form shall constitute compliance with the requirement
4 to file the report.

5 (e) An 805 report shall also be filed within 15 days following
6 the imposition of summary suspension of staff privileges,
7 membership, or employment, if the summary suspension remains
8 in effect for a period in excess of 14 days.

9 (f) A copy of the 805 report, and a notice advising the licentiate
10 of his or her right to submit additional statements or other
11 information pursuant to Section 800, shall be sent by the peer
12 review body to the licentiate named in the report.

13 The information to be reported in an 805 report shall include the
14 name and license number of the licentiate involved, a description
15 of the facts and circumstances of the medical disciplinary cause
16 or reason, and any other relevant information deemed appropriate
17 by the reporter.

18 A supplemental report shall also be made within 30 days
19 following the date the licentiate is deemed to have satisfied any
20 terms, conditions, or sanctions imposed as disciplinary action by
21 the reporting peer review body. In performing its dissemination
22 functions required by Section 805.5, the agency shall include a
23 copy of a supplemental report, if any, whenever it furnishes a copy
24 of the original 805 report.

25 If another peer review body is required to file an 805 report, a
26 health care service plan is not required to file a separate report
27 with respect to action attributable to the same medical disciplinary
28 cause or reason. If the Medical Board of California or a licensing
29 agency of another state revokes or suspends, without a stay, the
30 license of a physician and surgeon, a peer review body is not
31 required to file an 805 report when it takes an action as a result of
32 the revocation or suspension.

33 (g) The reporting required by this section shall not act as a
34 waiver of confidentiality of medical records and ~~committee~~ *peer*
35 *review body* reports. The information reported or disclosed shall
36 be kept confidential except as provided in subdivision (c) of Section
37 800 and Sections 803.1 and 2027, provided that a copy of the report
38 containing the information required by this section may be
39 disclosed as required by Section 805.5 with respect to reports
40 received on or after January 1, 1976.

1 (h) The Medical Board of California, the Osteopathic Medical
2 Board of California, and the Dental Board of California shall
3 disclose reports as required by Section 805.5.

4 (i) An 805 report shall be maintained by an agency for
5 dissemination purposes for a period of three years after receipt.

6 (j) No person shall incur any civil or criminal liability as the
7 result of making any report required by this section.

8 (k) A willful failure to file an 805 report by any person who is
9 designated or otherwise required by law to file an 805 report is
10 punishable by a fine not to exceed one hundred thousand dollars
11 (\$100,000) per violation. The fine may be imposed in any civil or
12 administrative action or proceeding brought by or on behalf of any
13 agency having regulatory jurisdiction over the person regarding
14 whom the report was or should have been filed. If the person who
15 is designated or otherwise required to file an 805 report is a
16 licensed physician and surgeon, the action or proceeding shall be
17 brought by the Medical Board of California. The fine shall be paid
18 to that agency but not expended until appropriated by the
19 Legislature. A violation of this subdivision may constitute
20 unprofessional conduct by the licensee. A person who is alleged
21 to have violated this subdivision may assert any defense available
22 at law. As used in this subdivision, “willful” means a voluntary
23 and intentional violation of a known legal duty.

24 (l) Except as otherwise provided in subdivision (k), any failure
25 by the administrator of any peer review body, the chief executive
26 officer or administrator of any health care facility, or any person
27 who is designated or otherwise required by law to file an 805
28 report, shall be punishable by a fine that under no circumstances
29 shall exceed fifty thousand dollars (\$50,000) per violation. The
30 fine may be imposed in any civil or administrative action or
31 proceeding brought by or on behalf of any agency having
32 regulatory jurisdiction over the person regarding whom the report
33 was or should have been filed. If the person who is designated or
34 otherwise required to file an 805 report is a licensed physician and
35 surgeon, the action or proceeding shall be brought by the Medical
36 Board of California. The fine shall be paid to that agency but not
37 expended until appropriated by the Legislature. The amount of the
38 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
39 violation, shall be proportional to the severity of the failure to
40 report and shall differ based upon written findings, including

whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan ~~registered~~ *licensed* under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 2. Section 805.05 is added to the Business and Professions Code, to read:

805.05. (a) (1) *“Voluntary remediation” means remedial requirements that are imposed by a peer review body and voluntarily accepted by a licentiate pursuant to this section. These remedial requirements may include mandatory proctoring, consultation, education, and retraining.*

(2) *“Reporting person” means the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body imposing a voluntary remediation upon a licentiate, or the chief executive officer or administrator of any licensed health care facility or clinic where the licentiate has staff privileges.*

(b) *A peer review body may impose, and a licentiate may accept, voluntary remediation when deemed appropriate by the peer review body, including without limitation, for a medical disciplinary cause or reason. The remediation period shall not exceed six months, except to the extent necessary, in the discretion of the peer review body, to permit a licentiate to complete an ongoing program of education or training that was in progress prior to the expiration*

1 of the six-month period. As needed to protect patients, the peer
2 review body may limit the licentiate's staff privileges during the
3 pendency of voluntary remediation.

4 (c) A licentiate shall not seek to establish new staff privileges
5 at any health care facility or clinic during the pendency of any
6 voluntary remediation.

7 (d) (1) Within 15 days following the commencement date of
8 voluntary remediation, the reporting person shall submit a report
9 to the agency that includes the name and license number of the
10 licentiate involved, a description of the facts and circumstances
11 of the voluntary remediation, and may include any other
12 information the reporting person deems relevant.

13 (2) The reporting person shall file a supplemental report within
14 30 days following the date on which all the requirements of the
15 voluntary remediation have been successfully completed or lifted
16 by the peer review body.

17 (3) The reporting person shall immediately file a supplemental
18 report if the licentiate fails to comply with the terms of a voluntary
19 remediation.

20 (4) The reporting person shall provide the licentiate with a copy
21 of the initial report, together with a notice advising the licentiate
22 of his or her right to submit additional statements or other
23 information pursuant to subdivision (c) of Section 800, and any
24 supplemental reports, in each case at the time of filing the
25 respective report with the agency.

26 (e) Within 15 days following the commencement date of a
27 voluntary remediation, the reporting person shall provide written
28 notice to each facility at which the affected licentiate then has staff
29 privileges of the voluntary remediation, the facts and circumstances
30 of the voluntary remediation, and may include any other relevant
31 information the reporting person deems relevant. The reporting
32 person shall also notify each of these facilities that the voluntary
33 remediation has been completed within 30 days following the date
34 on which all the requirements of the voluntary remediation have
35 been successfully completed or lifted by the peer review body.

36 (f) Voluntary remediation shall not entitle a licentiate to a
37 hearing pursuant to Section 809.2.

38 (g) If a licentiate chooses not to accept voluntary remediation,
39 and the peer review body takes or recommends an action required
40 to be reported to the agency pursuant to Section 805, the licentiate

1 *shall have hearing rights with respect thereto pursuant to Sections*
2 *809 to 809.9, inclusive.*

3 *(h) The reporting required by this section shall not act as a*
4 *waiver of confidentiality of medical records and peer review body*
5 *reports. Notwithstanding Sections 803.1 and 2027, the information*
6 *reported or disclosed pursuant to this section shall be kept*
7 *confidential except as provided in subdivision (c) of Section 800.*

8 *(i) No person shall incur any civil or criminal liability as the*
9 *result of making any report required by this section.*

10 *SEC. 3. Section 809.2 of the Business and Professions Code*
11 *is amended to read:*

12 *809.2. If a licentiate timely requests a hearing concerning a*
13 *final proposed action for which a report is required to be filed*
14 *under Section 805, the following shall apply:*

15 *(a) The hearing shall be held, as determined by the peer review*
16 *body, before a trier of fact, which shall be an arbitrator or*
17 *arbitrators selected by a process mutually acceptable to the*
18 *licentiate and the peer review body, or before a panel of unbiased*
19 *individuals who shall gain no direct financial benefit from the*
20 *outcome, who have not acted as an accuser, investigator, factfinder,*
21 *or initial decisionmaker in the same matter, and which shall*
22 *include, where feasible, an individual practicing the same specialty*
23 *as the licentiate.*

24 *(b) If a hearing officer is selected to preside at a hearing held*
25 *before a panel, the hearing officer shall gain no benefit, including,*
26 *without limitation, any direct financial benefit, from the outcome,*
27 *shall not act as a prosecuting officer or advocate, and shall not be*
28 *entitled to vote, and shall not be an attorney who has represented*
29 *the applicable peer review body or licensed health care facility or*
30 *clinic within the prior two years.*

31 *(c) The licentiate shall have the right to a reasonable opportunity*
32 *to voir dire the panel members and any hearing officer, and the*
33 *right to challenge the impartiality of any member or hearing officer.*
34 *Challenges to the impartiality of any member or hearing officer*
35 *shall be ruled on by the presiding officer, who shall be the hearing*
36 *officer if one has been selected.*

37 *(d) The licentiate shall have the right to inspect and copy at the*
38 *licentiate's expense any documentary information relevant to the*
39 *charges which the peer review body has in its possession or under*
40 *its control, as soon as practicable after the receipt of the licentiate's*

1 request for a hearing. The peer review body shall have the right
2 to inspect and copy at the peer review body's expense any
3 documentary information relevant to the charges which the
4 licentiate has in his or her possession or control as soon as
5 practicable after receipt of the peer review body's request. The
6 failure by either party to provide access to this information at least
7 30 days before the hearing shall constitute good cause for a
8 continuance. The right to inspect and copy by either party does
9 not extend to confidential information referring solely to
10 individually identifiable licentiates, other than the licentiate under
11 review. The arbitrator or presiding officer shall consider and rule
12 upon any request for access to information, and may impose any
13 safeguards the protection of the peer review process and justice
14 requires.

15 (e) When ruling upon requests for access to information and
16 determining the relevancy thereof, the arbitrator or presiding officer
17 shall, among other factors, consider the following:

18 (1) Whether the information sought may be introduced to
19 support or defend the charges.

20 (2) The exculpatory or inculpatory nature of the information
21 sought, if any.

22 (3) The burden imposed on the party in possession of the
23 information sought, if access is granted.

24 (4) Any previous requests for access to information submitted
25 or resisted by the parties to the same proceeding.

26 (f) At the request of either side, the parties shall exchange lists
27 of witnesses expected to testify and copies of all documents
28 expected to be introduced at the hearing. Failure to disclose the
29 identity of a witness or produce copies of all documents expected
30 to be produced at least 10 days before the commencement of the
31 hearing shall constitute good cause for a continuance.

32 (g) Continuances shall be granted upon agreement of the parties
33 or by the arbitrator or presiding officer on a showing of good cause.

34 (h) A hearing under this section shall be commenced within 60
35 days after receipt of the request for hearing, and the peer review
36 process shall be completed within a reasonable time, after a
37 licentiate receives notice of a final proposed action or an immediate
38 suspension or restriction of clinical privileges, unless the arbitrator
39 or presiding officer issues a written decision finding that the

1 licentiate failed to comply with subdivisions (d) and (e) in a timely
2 manner, or consented to the delay.
3 ~~SECTION 1. It is the intent of the Legislature to enact~~
4 ~~legislation revising the current health care practitioner peer review~~
5 ~~process in California in order to improve patient safety and care.~~

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